IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 4566 of 2005(R)

OS.771/2004 of PRL.M.C.,ERNAKULAM
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PETITIONER:

M/S. AIRTEL, BHARTI CELLULAR LIMITED
REPRESENTED BY ITS MANAGER, CIRCLE OFFICE,
BHARTI TOWERS, S.A.ROAD, KADAVANTHARA,
KOCHI-682 020.

BY ADV. SRI.VIVEK VARGHESE P.J.

RESPONDENTS:
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1. REMANI JOHNSON W/O. DR.JOHNSON
RESIDING AT KUTTEETHARAYIL HOUSE,
VAZHAKKALA, VAZHAKKALA VILLAGE,
THRIKKAKARA P.O.

2. MR.CHERIAN ALIAS BABU,
S/O. KURIEN, OWNER OF NEREVEETTIL BUILDINGS,
RESIDING AT SWISS APARTMENT, THURUTHEPARAMBU ROAD,
VAZHAKKALA VILLAGE, THRIKKAKARA P.O.

3. THRIKKAKARA GRAMA PANCHAYAT
REP.BY ITS SECRETARY, PANCHAYAT OFFICE,
KAKKANAD P.O., KOCHI-682 030.

R3 BY ADV. SRI.V.M.KURIAN
R1 BY ADV.SRI.T.H.ABDUL AZEEZ
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.4566/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.771/04 OF PRL.MUNSIFF'S COURT, ERNAKULAM.

EXT.P2 – TRUE COPY OF I.A.1079/04 FILED BY PETR. BEFORE VACATION COURT, ERNAKULAM.

EXT.P3 – TRUE COPY OF NOTICE RECEIVED IN EXT.P2 I.A.

EXT.P4 – TRUE COPY OF ORDER DT.25.11.04 IN O.S.771/04.

EXT.P5 – TRUE COPY OF ORDER IN ILA.10583/04 IN O.S.771/04, DT.17.1.05.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.4566 OF 2005

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DATED THIS THE 2ND JULY, 2007

J U D G M E N T

Mr.T.H.Abdul Azeez, learned counsel for the 1st respondent fairly submits that the issue is covered in favour of the petitioner by the judgment of the Supreme Court in **Kailash v. Nanhku** (2005 (2) KLT 623). The counsel further pointed out that what the Supreme Court has stated is that the trial court will have discretion in the matter of receiving written statements even if they are filed beyond the period of 90 days. Considering the above submission and taking note of the principles laid down by the Supreme Court, I am of the view that the impugned orders Exts.P4 and P5 are liable to be set aside, but only on terms.

2. Exts.P4 and P5 orders will stand set aside. The learned Munsiff is directed to receive the written statement already filed by the petitioner on file, on condition that the petitioner pays to the 1st respondent, either directly or through her counsel appearing in this Court, a sum of Rs.1000/- within three weeks from today. Failing such payment, the impugned orders will stand confirmed. If payment is made and the order setting aside Exts.P4 and P5 becomes operative, the learned Munsiff will formulate issues on the basis of the

contentions which are raised in the written statement and dispose of the suit in accordance with law.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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